IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 455 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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INSPECTING ASSISTANT COMMR OF INCOME TAX - Appellant(s)
Versus
SAMIR DIAMONDS MAFG P LTD - Defendant(s)

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Appearance :
MR RP BHATT for Appellant(s) : 1,
None for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 28/07/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and order dated 13.11.1986 passed by the Income-Tax Appellate Tribunal, Ahmedabad (for short, “the Tribunal”) in Income Tax Acquisition Appeals No. 1 & 2/Ahd/86.

2.0 The brief facts of the case are that the transferor is a Partnership Firm consisting of eight members and the transferee is a Private Limited Company. The transferor - Firm was constituted at Bombay under a Deed of Partnership

dated 17.07.1978 to carry on the business of polishing diamonds. With a view to start its own factory for cutting and polishing the diamonds, the Firm acquired a piece of land in Laksana Village of Surat District in February 1979. On the said land, the Firm constructed its factory building as also the residential quarters for its staff members.

2.1 The transferee - Company was incorporated in April, 1981 and was doing the work of the Firm at Varachha Road, Surat. Since its place of business was small, the Company took on rent the premises of the Firm at Laksana on rental basis w.e.f 01.07.1982.

2.2 When the Firm purchased the land at Laksana, the same was an agricultural land. The Surat Urban Development Authority had declared the said land as Agricultural Land and issued Notice to the Firm to demolish the structure put up by it on the said land. The Firm made several representations to S.U.D.A. with a request to not

proceed with the Notice issued by it. However, no heed was paid to the said requests made by the Firm. Therefore, the Firm entered into an Agreement to sell the said land to the Company wherein, the value of the property was estimated at Rs. 47,90,000/-. However, the District Valuation Officer estimated the value of the said property at Rs. 64,25,000/- and, accordingly, issued Notice under Chapter XX-A dated 10.10.1984 both to the Firm as well as to the Company on the ground that the “transfer” as agreed to between the parties has not been truly stated and that the same has been done with a view to evade tax. Ultimately, the order dated 12.12.1985 came to be passed by the Competent Authority under Section 269F of the Income-Tax Act, 1961

2.3 Being aggrieved by the said order of the Competent Authority, the Firm as well as the Company preferred appeals before the Tribunal. The Tribunal, after hearing the parties, held that the proceedings initiated under Chapter XX-A of the said Act were invalid thereby, allowing

the said appeals. Against the said order, the appellant has approached this Court by way of this appeal.

3.0 Heard learned counsel for the parties. From the documents on record, it appears that the Competent Authority has initiated the proceedings under Chapter XX-A of the said Act merely relying on the Valuation Report of the District Valuation Officer who had estimated the value of the property in question at Rs. 64,25,000/-. In the Agreement to sell dated 08.07.1983, the value of the said property was estimated at Rs. 47,90,000/-. However, the fact which is required to be noted here is that the Competent Authority had not doubted the bonafide of the transaction entered into between the parties. It had initiated the said proceedings only on the ground that under-estimate in the value of the property was done with the object of facilitating the reduction/evasion of the liability of the transferor and the concealment of income in the hands of the transferee.

3.1 However, there is no iota of evidence to show that the said transaction was entered into for the aforesaid ulterior motive. Considering the facts and circumstances of the case, no infirmity or illegality appears to have been committed by the Tribunal. I am, therefore, in complete agreement with the reasonings given by and the findings arrived at by the Tribunal and hence, find no reason to interfere in this appeal. Hence, the appeal deserves to be dismissed.

4.0 In the result, the appeal is dismissed. No order as to costs.

(K. S. Jhaveri, J.)

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